IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.8061 OF 2005

Arun D. Kedia .. Applicant

Versus

Sr.Inspector of Police, DCB

C.I.D., and Anr. .. Respondents

Mr.S.V.Marwadi for applicant

Mr.R.Y.Mirza, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 12th December 2005.

P.C.

. Mentioned not on Board.

2. Heard Mr.Marwadi for applicant and Mr.Mirza for State. Mr.Marwadi states that urgency is because the Learned Magistrate has issued non bailable warrant against the applicant and he would be taken in custody any moment. He states that applicant is present in Court.

3. Submission of Mr.Marwadi is that F.I.R. is lodged by one Arvind Tibrewala alleging offences under section 306 of I.P.C. at Versova police station and the same is registered as C.R.No.133 of 2002. It appears that police have commenced investigation even for purpose of finding out involvement of applicant in an offence punishable under section 302 of I.P.C. Mr.Marwadi submits that applicant has attended police station on all dates and cooperated with police authorities in investigation.

4. Pursuant to a charge sheet filed in the Court of Additional Chief Metropolitan

Magistrate, 37th Court issued a non bailable warrant. Applicant had applied for anticipatory bail in the event of his arrest in connection with the said C.R. and that application was registered as Anticipatory Bail Application No.1450 of 2005 by the sessions court.

5. Mr.Marwadi submits that the sessions Judge was in clear error in law in rejecting the application for anticipatory bail only because the concerned Magistrate had issued a non bailable warrant after charge sheet is filed in that court. He submits that the non maintainability of bail application on this ground cannot be a plea which is available to the prosecution. In his submission, application cannot be rejected only because charge sheet is filed and non bailable warrant is issued by Magistrate, more so, when the case is not triable by him.

6. Mr.Marwadi, tenders a copy of Supreme Court Judgement in the case of Bharat Choudhary and Anr. Vs. State of Bihar and Anr., reported in A.I.R. 2003 S.C. 4662. Mr.Mirza, A.P.P. states that now investigation has commenced for offence alleged under section 302 of I.P.C. He submits that non bailable warrant is issued and he invites my attention to the same and contends that the applicant herein has not attended pursuant to the same. In his submission, applicant must surrender before the Magistrate and apply for appropriate reliefs.

7. In my view, the Supreme Court decision is clear. In the light of the observations of Supreme Court and more particularly para 7 thereof, it is abundantly clear that in a suitable case either court of sesions or this court can exercise its power under section 438 of Cr.P.C., even when cognisance is taken or charge sheet is filed. Object of section 438 is

considered in this decision and that is how, the Court viz., Sessions or High Court has been held to be possessing powers to grant appropriate reliefs. The sessions judge was therefore, in error in rejecting the application.

8. At this stage, Mr.Marwadi states that liberty be granted to applicant to apply for anticipatory bail afresh. Needless to state that upon such application being made, sessions court shall dispose of the same on merits and in accordance with law. Liberty to move the sessions court in the light of the present application being disposed of as not pressed. However, applicant not to be arrested till 19th December 2005. Applicant however, shall attend concerned police station as and when summoned. Applicant to remain present in sessions court when the application for anticipatory bail is moved. All parties to act on authenticated copy of this order.

(S.C.DHARMADHIKARI, J)